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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Zaire, prepared by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission resolution 1995/69

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ABBREVIATIONS

In order not to exceed the required number of pages, the following abbreviations have been used:

ADDIHAC	Agence pour la diffusion du droit humanitaire (Agency for the dissemination of humanitarian law)
ACPZ	Association des cadres pénitenciaires du Zaïre
ASOP	Action sociale et d'organisation paysanne
AZADHO	Association zaïroise pour la défense des droits de l'homme
BSRS	Brigade spéciale de recherche et de surveillance (Special Investigation and Surveillance Brigade)
CNE	National Electoral Commission
CNS	National Sovereign Conference
COSSEP	Conseil des syndicats de services publics (Council of Civil Service Unions)
CNZDH	Zairian National Commission on Human Rights
DSP	Division spéciale présidentielle (Special Presidential Division)
DYNASTE	Civil Servants Union
FAR	Rwandan armed forces
FAZ	Zairian armed forces
FCDD	Femmes chrétiennes pour la démocratie et le développement (Christian Women for Democracy and Development)
FPR	Rwandan Patriotic Front
GC	Garde civile (Civil Guard)
HCR-PT	Haut Conseil de la République - Parlement de transition (Supreme Council of the Republic - Transitional Parliament)
JUFERI	Jeunesses de l'Union des fédéralistes et républicains indépendents)
LDH	Ligue des droits de l'homme
LINELIT	Ligue nationale pour les élections libres et transparentes (National League for Free and Transparent Elections)
LIZADEEL	Ligue zaïroise pour la défense des droits des étudiants et des élèves

MFJP	Mouvement des femmes pour la justice et la paix (Women's Movement for Justice and Peace)
MPR	Mouvement populaire de la révolution
PALU	Parti lumumbiste unifié
PDSC	Christian Democratic and Social Party
PALPEHUTU	Parti pour la libération du peuple Hutu (Party for the Liberation of the Hutu people)
RDR	Rassemblement démocratique pour la République
SARM	Service d'action et de renseignements militaires
SNIP	Service national d'intelligence et de protection (National Intelligence and Protection Service)
UDPS	Union pour la démocratie et le progrès social
UFOS	Union des forces sociales
UNTZA	Union nationale des travailleurs du Zaïre
USORAL	Union sacrée de l'opposition radicale et alliés
ZCSO	Zairian Camp Security Operation

UGEAFI, CRONGD/SK, AFECEF, CRONGD, PADECO, GEAPO, CADDHOM and ADIPET are NGOs identified only by their abbreviations.

Whenever no year is indicated for a date, the year is assumed to be 1995.

I. INTRODUCTION

A. Mandate of the Special Rapporteur

1. The Commission on Human Rights in its resolution 1994/87 decided to consider the question of the situation of human rights in Zaire at its fifty-first session, for which purpose it invited its Chairman to appoint, after consultations with the Bureau, a special rapporteur mandated to establish direct contacts with the authorities and the people of Zaire and to report to the Commission at its fifty-first session. The resolution was approved by the Economic and Social Council in decision 1994/270. The Special Rapporteur duly submitted his report to the Commission (E/CN.4/1995/67 and Corr.1), which took note of it with appreciation, decided to extend the Special Rapporteur's mandate for an additional year, and requested him to prepare for its fifty-second session a report in which he would indicate how the Government of Zaire had taken into account his recommendations. The Commission also deplored the continuing serious violations of human rights and fundamental freedoms in Zaire, particularly the practice of enforced disappearances; noted with concern that the army and the security forces continued to use force against civilians; and condemned all discriminatory measures against minority groups (resolution 1995/69, approved by the Council in decision 1995/280). Pursuant to this resolution, the Special Rapporteur submits his second report.

B. Activities of the Special Rapporteur

2. The Special Rapporteur held consultations in Geneva (from 5 to 9 June) and Brussels (from 28 August to 1 September), in the course of which he spoke with the head of the Zairian Mission to the international organizations with their headquarters in Geneva, and with officials of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC). He received information from the non-governmental organizations (NGOs) World Organization Against Torture, Plate-forme Zaïre-Suisse, Ligue des droits de l'homme (Zaïre), La voix des sans-voix, Ligue zaïroise pour les droits de l'homme, Fraternité des prisons au Zaïre and Amnesty International, as well as from representatives of Zairian political parties, academics and experts in the region. A third round of consultations was suspended owing to the Organization's financial problems.

3. In the course of a private visit to the United States, he met representatives of the international NGOs Human Rights Law Group and Human Rights Watch/Africa, as well as Zairian lawyers and academics living in the country.

4. Several times the Special Rapporteur informed the Government of Zaire of his need to visit the country, suggesting the period 28 August to 10 September. Receiving no reply, he proposed carrying out the mission from 5 to 20 November. Unfortunately, the invitation was confirmed only on 8 November, so that the visit actually took place from 10 to 21 November, during which time he visited Kinshasa, Goma and Bukavu.

5. In Zaire, the Special Rapporteur spoke with the Prime Minister, the Ministers for Foreign Affairs, the Interior, Justice and Defence and with the

Deputy Minister for Foreign Affairs, the two First Vice-Presidents of the Supreme Council of the Republic - Transitional Parliament (Haut Conseil de la République - Parlement de transition) (HCR-PT), the Governor of Kinshasa and the Chairman of the Rassemblement démocratique pour la République (RDR), the Governor of Southern Kivu, and with the Secretary-General of the recently created Zairian National Commission on Human Rights (CNZDH), which plans to be a "national institution" for the promotion and protection of those rights. He also spoke with the Bishop of Bukavu, as well as with the ambassadors of several countries, representatives of the Holy See and of the European Union and with the UNHCR delegation in Kinshasa, Goma and Bukavu.

6. The non-governmental organizations interviewed included: Femmes chrétiennes pour la défense et le développement (FCDD); Groupe AMOS; Ligue des droits de l'homme (Zaïre); Ligue zaïroise des électeurs; Ligue nationale pour les élections libres et transparentes (LINELIT); Agence pour la diffusion du droit humanitaire (ADDIHAC); Ligue zaïroise pour la défense des droits des étudiants et des élèves (LIZADEEL); Association des cadres pénitenciaires du Zaïre (ACPZ); Universelle droits de l'homme (UDH); Prison Fellowship; Commission justice, paix et sauvegarde de la création de l'Eglise du Christ au Zaïre; La voix des sans-voix; Association zaïroise pour la défense des droits de l'homme (AZADHO); Ligue des droits de l'homme (LDH-Zaïre); Comité pour la démocratie et les droits de l'homme; Association des intellectuelles pour la défense de la démocratie, justice et paix catholique; Justice et paix de l'Eglise Kimbanguiste; and Avocats sans frontières. He also met journalists of the newspapers Umoja, La Renaissance, L'Observateur, Le Potentiel, Le Compatriote, L'Economica, Le Palmarès, Le Groqnon and Le Phare. In Bukavu he held meetings with members of the Comité anti-Bwaki, UGEAFI, SK, AFECEF, CRONGD, PADECO, GEAPO, Action sociale et d'organisation paysanne (ASOP), Héritiers de la justice, Commission justice et paix, CADDHOM, Baderka Kalemie de Shaba, ADIPET and Société civile.

7. The Special Rapporteur transmitted to the Government of Zaire, by mail through its Permanent Mission in Geneva, 112 cases of allegations concerning violations of human rights, in communications dated 9 June, 12 July, 24 August, 11 September, 31 October and 22, 23 and 30 November. Copies of the first five were delivered again during the Special Rapporteur's visit to the Ministers for Foreign Affairs and Justice, when he found that they had not been brought to their knowledge. Unfortunately, to date a reply has been received only to the last communication, concerning three persons, so that the Special Rapporteur has not had the opportunity to appreciate the Government's version of all the other cases. On 21 December, the Government sent a copy of the decree establishing the CNZDH (see paras. 21 and 135).

8. The Special Rapporteur carried out his mission in complete freedom and was received by all the authorities from whom he requested interviews. Nevertheless, he found the atmosphere to be more hostile than the previous year as confirmed, for instance, by the lack of reply to his initial request for an authorization to visit the country, by the postponement until the last moment of the invitation finally issued, by the lack of reply to or even acknowledgement of receipt of the communications concerning cases, and by the constant querying of his mandate and ceaseless criticism of the United Nations for its supposed anti-Zairian attitude.

C. Establishment of an office of the High Commissioner for Human Rights in Zaire

9. In his first report, the Special Rapporteur proposed the setting up of an office for the High Commissioner for Human Rights in the country, with two specialists, to gather information on allegations of human rights violations, follow up complaints, visit prisons, keep the Special Rapporteur informed, and provide technical assistance to the Government and NGOs. In its resolution 1995/69, the Commission invited the High Commissioner to consider, within existing resources, the above recommendation.

10. The Special Rapporteur is grateful for the High Commissioner's efforts to follow up his recommendation, in particular by sending a representative to Zaire in April. All the Zairian authorities were favourably disposed towards the establishment of the delegation and thought that it should concentrate on aspects such as the administration of justice, human rights education and NGO training.

11. The High Commissioner subsequently continued to discuss the issue with the Permanent Mission of Zaire in Geneva, while efforts were made to find the necessary finance. On 2 October, the High Commissioner handed the Minister for Foreign Affairs a draft cooperation agreement for the establishment of the delegation. The issue was raised with the Zairian authorities during the Special Rapporteur's visit. Unfortunately, owing to problems of lack of coordination within the Government, it has not yet been possible to set up the office of the High Commissioner, despite the fact that the Special Rapporteur was assured that the idea had been approved by the Council of Ministers in August. On 12 December, the High Commissioner invited the Government to sign the agreement to set up the office.

D. Fulfilment of international human rights obligations

12. Zaire is a party to the international human rights instruments referred to in paragraph 18 of report E/CN.4/1995/67. The Special Rapporteur expressed his concern for the Government's considerable delay with its reports. On 25 April, the Government submitted in one batch its reports 3 to 9 to the Committee against Racial Discrimination, but the other reports are still overdue.

13. The situation as regards the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is still not satisfactory. Although the Government insists that it is a party to the Convention, since accession was authorized under Ordinance No. 89-014 of 1989, the instrument of ratification has still not been deposited. Nevertheless, the Government submitted its first report to the secretariat on 25 April.

14. The Government has also failed to reply to the requests of the Special Rapporteur on the question of torture, who transmitted 13 cases during the year, the Working Group on Arbitrary Detention (6 cases), or the Special Rapporteur on the independence of judges and lawyers (one situation).

II. GENERAL BACKGROUND INFORMATION

15. The Republic of Zaire, which is located in the centre of Africa, obtained its independence from Belgium in 1960. Since 1965, following a coup d'état, Marshal Mobutu Sese Seko has held full powers in the country (E/CN.4/1995/67, paras. 23 to 27).

16. Zaire's population of over 40 million inhabitants includes some 450 ethnic groups, speaking over 200 languages (including 4 indigenous languages and French). The country is divided into 11 regions. Internal migrations took place before and during colonization, while the country received large flows of immigrants, especially from the present-day territories of Rwanda and Burundi. This national, ethnic, linguistic and regional diversity has a considerable impact on the generation of conflicts, on the administration of power and on the enjoyment of human rights, a situation which has only been aggravated by the arrival of refugees from Rwanda and Burundi as a result of the conflicts in those countries.

17. On 24 April 1990, a process known as the transition to democracy was initiated, instituting a multi-party system. A National Sovereign Conference (CNS) representing major social and political sectors was held and more freedom was allowed for the opposition and the press. When the CNS closed in 1992, frustrating the hopes of many, a prime minister and a transition parliament were elected by the Conference (with the Bishop of Kisangani, Monsignor Monsengwo, who had presided over the Conference, as President). That outcome was not accepted by Mobutu and his supporters, giving rise to a division of powers, with two prime ministers both claiming legitimacy. Then on 9 April 1994, a Transitional Constitution was promulgated, according to which the Prime Minister was to be elected by the HCR-PT (made up of members appointed by the CNS, plus former parliamentarians whose terms of office had expired in 1991, which ensures a majority for the parties close to the President) from the political family to which the Head of State does not belong. These authorities were to lead the country to democracy, which was to be officially instituted on 9 July 1995 (E/CN.4/1995/67, paras. 31 to 50 and 119 to 128).

18. The dominance of politics by the leadership is reflected in the constitutional embodiment of two "political families", which monopolize power between them, the "family of the President" and the "family of the opposition", the latter being as vague as may be imagined. In 1994, the HCR-PT appointed Mr. Kengo Wa Dondo Prime Minister, although he is not recognized as belonging to a political family different from that of the President by large sectors of the opposition to the Head of State, gathered together under the banner of USORAL (Union sacrée de l'opposition radicale et alliés), headed by Etienne Tshisekedi, the leader of the UDPS (Union pour la démocratie et le progrès social).

19. In his previous report, the Special Rapporteur expressed the fear "that the Zairian people may once again find its aspirations to democracy thwarted. The requirements to enable the new authorities to take office on the date planned, 9 July 1995, are far from being met" (para. 243). The events of 1995 only confirmed those fears (see para. 58 below).

20. Paragraphs 52 to 76 of the Special Rapporteur's previous report may be referred to for a description of the composition, attributes and real authority of the State powers.

21. There is no "national institution" in the country, in the sense referred to in the Commission's resolution 1992/54 and the Principles approved by the General Assembly in resolution 48/134. The CNZDH was, however, created on 8 May by Decree No. 0018, with an invitation to NGOs, universities and churches to participate. It was subsequently mentioned only by the Minister for Foreign Affairs and the Prime Minister, who specified that it would be pluralistic, independent and governed by the said Principles. When asked, some NGOs recalled having attended an inaugural meeting, which only appointed a group to draft the institution's statutes, with no regard for the pluralism called for in paragraph B.1 of the Principles, and nothing is known of any subsequent developments.

22. It is worth pointing out that there are two key notions which have remained fully applicable in 1995: (a) that real, unlimited power is still vested in President Mobutu Sese Seko Kuku Ngbendu Waza Banga, basically thanks to his full control over the Zairian armed forces (FAZ), as well as the security and police forces (E/CN.4/1995/67, paras. 59, 61 et seq. and para. 260, inter alia); (b) that those military, police and security forces enjoy irrefutable impunity.

III. ETHNIC AND REGIONAL RIVALRIES

A. Continuation of ethnic conflicts in Northern Kivu

23. In his earlier report, the Special Rapporteur referred extensively to the socio-political causes and consequences of ethnic tensions in the region (E/CN.4/1995/67, paras. 85-95), which are due to the way frontiers were established in colonial times and to movements of the Rwandan population, known as the Banyarwanda, between 1939 and 1954 and again after 1959. The Special Rapporteur continued to receive reports of acts of ethnic violence between local indigenous groups (Bahunde, Banyanga, Banande and Batembo) and the Banyarwanda. The increase in the Hutu population has exacerbated the tension, since local ethnic groups, under the threat of loosing territorial and political power, have set up bands (bakiri or katuku) to attack the Hutu (who have themselves set up bands known as bakobwa or kibarizo to defend themselves), with the result that there are practically no more Hutus in Walikale nor any shared villages in Masisi. Moreover, when the Zairian authorities expelled refugees in August, some 150,000 of them fled to the mountains and joined the Banyarwanda, although it is not sure that they have taken an active part in the armed bands.

24. The tensions are caused by two related problems. The first arises from the right of the Banyarwanda to Zairian nationality. This was recognized in the 1964 Constitution and in the law of 1965, which allowed them to vote in 1965 and 1967; it was left unchanged in the 1967 Constitution, and confirmed once again by Decree Law No. 71-020 of 1971; then it was restricted under Law No. 002 of 1972 to those living in Kivu since before 1960, abolished by law in 1981 and taken over by the CNS in 1992. The second problem is derived from the first, namely that recognizing the Banyarwanda as Zairians would give

them the right to vote in any elections which might be held. Moreover, owing to the fact that the colonial archives were destroyed by the Hunde and the Nyanga, it is impossible to trace filiations and nationalities.

25. The violence is further aggravated by such factors as the impunity of the Zairian armed forces with respect to their attacks on people's lives, raping of women and plundering, the armed state of the population, made worse with the arrival of Hutu refugees, and the lack of any attempt on the part of the Government to resolve the conflicts, when it is not itself instigating them.

26. In addition, a strong anti-Rwandan feeling has arisen, which has permeated all political sectors. As one disillusioned human rights advocate said: "In order to succeed in politics, you have to be anti-Rwandan". The First Vice-President of the HCR-PT, Anzuluni Bembe, claimed the right to expel all those of Rwandan origin, in connection with the plan to expel all recently arrived refugees. Tshisekedi is also opposed to the Banyarwanda taking part in elections, which are reserved for Zairians, and blames the present situation on Bisengimana Barthelemy, "Mobutu's right-hand man and number two in the country, who gave the Tutsis Zairian nationality".

27. This feeling underlies the HCR-PT agreements of 28 April, which decreed "the repatriation, unconditional and without delay, of all Rwandan and Burundian refugees and immigrants" and the "reinstatement of displaced Zairians on their lands in rural areas in Nyirangongo, Masisi, Ruthsuru, Walikale, Kalehe, Kabare, Walungu, Uvira, Fizi, Mwnega and Noba".

28. Decisions of this kind have the effect of stirring up violence, which eventually breaks out. Another decision which does nothing to improve matters is the one taken by the Governor of Northern Kivu to expel the only neutral parties, namely the international organizations on the spot and representatives of society at large, from a conclave called to pacify the area (2 August).

29. Regrettably, the call by the Catholic Bishops of Kivu on 9 March to grant Zairian nationality to those settled in the country prior to 1960 was flatly rejected and condemned by the politicians.

30. It may be hoped that the Cairo Declaration on the region of the Great Lakes of 28 November, in which President Mobutu joined in condemning an ideology of exclusion, which generates fear, frustration, hatred and tendencies towards extermination and genocide, will encourage the Zairian political forces to change their attitude towards the people from Rwanda and Burundi.

31. Between June and August 1995, these conflicts are reported to have produced about 1,000 deaths and 100,000 displaced persons. The situation is further exacerbated by conflicts between local ethnic groups, such as between Bahutu and Batutsi, Banyanga and Bahunde or Bahutu and Bahunde. There were also confrontations between the Batembos and the FAZ, and one overall aggravating factor is the arms traffic in the region.

32. There have been reports of frontier attacks in Rwanda and Burundi by former refugee members of the Rwandan Armed Forces (FAR), who carry out raids

in Rwanda and return to their camps, sometimes provoking retaliations by the Rwandan army. The commitment undertaken in Cairo by the Heads of State of the region of the Great Lakes to put a stop to these occurrences opens up some hope that such attacks will cease.

B. New conflict with the Banyamulengue in Southern Kivu

33. Ever since 1797, under the rule of Yuhi IV Gahindiro, Rwandan Tutsis have emigrated to the Congo (Zaire), settling in Kakamba, in the plain of Ruzizi and in the higher regions (Mulengue hills), because of the climate and to feed their cattle. They are now to be found in Uvira, Mwenga and Fizi, where they have set up villages (Galye, Kishenbwe, Munanira, Majaga, Shangi Katoki and Lutabula). They speak a variation of Kiniyarwanda, although they do not share the same history or customs as other Zairians speaking the same language. As a political factor, they existed before colonization, continued under colonial rule and have still been present since independence. They lived in harmony with indigenous peoples (some Banyamulengue were elected in the first elections), until the bloody Mulehe rebellion occurred in 1964, opposing farmers and Banyamulengue cattlemen. During the Rwandan Tutsi refugee crises of 1959 and 1970, some political sectors began to identify the Banyamulengue as Rwandans. Since 1982, they have not succeeded in electing anyone to public office. They number some 400,000 individuals, all claiming to be Zairian.

34. They have suffered many injustices. The nationality law was not applied to them when it came into force. They are identified only by the origin of their names and by their physical appearance. They are discriminated against at work, etc. It is reported that political sectors exacerbate tribal conflicts in order to defend their own interests. The conflicts in Rwanda and Burundi have made their situation worse. They have been investigated on account of the death of President Ndadaye of Burundi (Hutu) and whenever any conflict has a Rwandan origin.

35. It has been announced that they are to be expelled from Zaire together with all Rwandan refugees, in accordance with the HCR-PT resolution of 28 April, despite the fact that they are Zairian. Some have already been expelled and others are under an expulsion order. The Special Rapporteur interviewed Muller Ruhimbika, who with others signed a petition to the authorities and confirmed the facts. Muller and the other signatories of the petition were detained on 21 November (48 hours after the interview) and then released again. A report of 19 October 1995 (No. 5072/515/C.71/95), signed by a top Uvira official, refers to an "ethnic group unknown in Zaire called the Banyamulengue", and goes on to state that its leaders "will all be expelled from the country together with their Catholic prelate", meaning the Bishop of Uvira, Mgr. Gapangwa Jérôme.

36. The only formal explanation for these abuses is that the Banyamulenge are Rwandan, except for the members of 14 families, which are considered Zairian.

37. The Special Rapporteur was informed that local tribes were arming in readiness for a struggle against the Banyamulenge, forcing the latter to do the same.

C. Completion of "regional cleansing" in Shaba

38. This conflict goes back to 1992, when the CNS appointed Etienne Tshisekedi, of Kasai origin, Prime Minister, unleashing the anger of the Governor of Shaba, Kyungu wa Kumwanza, and of the former Prime Minister, Nguz Karl-I-Bond, both of Shaba origin, who incited the population of Shaba to expel almost 1.5 million Kasai people living there. Youths of the Union des fédéralistes et républicains indepéndents (JUFERI) and the Youth of Katanga have forced the Kasai people to seek protection in schools and the train stations of Likasi and Kolwezi, hoping for a train to take them to Kasai as a means of saving their lives. This is an essentially political conflict, driven by forces close to President Mobutu, who are exploiting a regionalist rather than an ethnic feeling, since both the Kasai and Shaba people are of Luba ethnic origin (E/CN.4/1995/67, paras. 104-113). The "regional cleansing" process culminated in 1995, and there are no Kasai left in Shaba.

39. Despite the change of political authorities in Shaba (Prime Minister Kengo ordered the imprisonment of Kyungu on 27 March, apparently for separatist tendencies, and he was removed from office on 20 April, which gave rise to riots and calls by the JUFERI for a "dead region") and the appointment as Governor of a faithful ally of the President, Mulume Thaddée, of the MPR, the violence against the Kasai continued, and in the fights between the supporters of Kyungu and those of Karl-I-Bond, the victims were invariably of Kasai origin. In Lenge, JUFERI youths intimidate Kasai women, while in Kanongo-Musule, the houses of local Kasai inhabitants are invaded by the military, etc.

40. As a result of the lack of any government attempt to solve the problem and of the dependence created among displaced people interned in stations and schools, a number of NGOs and the ICRC closed their offices in the area.

41. Finally the international community had to intervene. On 4 May, the International Organization for Migration (IOM) began to evacuate the Kasai people from the land of their ancestors in leased trains. Apart from the transport, the operation included resettlement in the Kasai region, where the displaced people are having to learn new trades and to lead very different lives from what they were accustomed to previously.

D. Other conflicts

42. New conflicts have been reported, again attributed to incitement by the authorities, who appear unable to solve them: (a) in March, members of the Bakongo and Basolongo ethnic groups attacked other groups in Moanda, Bas-Zaïre; (b) a regional conflict broke out between inhabitants of the north and the south of Shaba; (c) a political-tribal conflict started by the MPR has affected the Balubas of Haut-Zaïre, the most serious incident of which is mentioned in paragraph 95 below.

IV. SITUATION OF REFUGEES IN ZAIRE

43. About 125,000 Sudanese and 15,000 Ugandans are living as refugees in Haut-Zaïre and about 60,000 Angolans in Bas-Zaïre, although the latter have

already been integrated. However, the real problem lies with the refugees who have arrived in Northern and Southern Kivu, fleeing from the conflicts in Rwanda and, to a lesser extent, in Burundi.

44. Since July 1994 with the victory of the Rwandan Patriotic Front (FPR), around 1 million refugees, essentially Hutus, have settled in these regions, mostly in camps, but others in the interior. They include a large number of soldiers of the defeated FAR, some of whom were involved in acts of genocide in their country; radicalized interhamwe militias; political leaders, and civilians whose decisions are strongly influenced by pressure from the soldiers and militia (E/CN.4/1995/67, paras. 96-103).

45. The presence of these refugees has had harmful consequences: (a) growing hatred of the Rwandans. This has been partly caused by violence on the part of some armed refugees against the local population, which in turn is a response to acts of provocation by the Zairian military; (b) extension of that hatred to the Banyarwanda and Banyamulengue, who have lived in Zaire for generations; (c) feeling on the part of the Zairians that they are being punished by the Rwandans, the international community and the United Nations itself: speaking to the Special Rapporteur the First Vice-President of the HCR-PT, Anzuluni Bembe, said that "the United Nations has occupied land belonging to Zairians by force, so that they are no longer able to cultivate their own fields"; the Minister of the Interior Matumba Mbangula, added that "Zaire cannot fund the Rwandan problem; the international community is putting us to the test, but we are going to pass that test on 31 December", while the Deputy Minister of Foreign Affairs, Mr. Masudi, stated that "the refugees have been given five months to leave, but the international community is doing nothing. There is a conflict of interests, since Rwanda is only interested in trying those allegedly responsible for acts of genocide, while Zaire is seeking reconciliation"; (d) bitterness at seeing refugees, including criminals, getting preferential treatment in food, health and other living conditions; (e) an increase in the cost of living and environmental devastation.

46. The truth of the matter is that, in general terms, the Zairian Government has accepted the arrival of the refugees as an inevitable fact. It has granted land for the installation of the camps and, apart from the incidents that occurred in August and the threat that they would be repeated in December, has respected the 1951 Convention relating to the Status of Refugees. However, not only is it not attempting to calm anti-Rwandan feeling, but it appears to be encouraging it and using the unfortunate circumstances as an excuse to expel all those of Rwandan origin.

47. Violence within the camps decreased in 1995 after the establishment in April of the Zairian Camp Security Operation) (ZCSO), consisting of a contingent of 1,513 Zairian soldiers, who are paid by the international community. In addition to maintaining order and security in the camps, ZCSO is responsible for preventing violence and escorting to the frontier those who wish to return. The operation includes a "crisis cell" in Kinshasa and a civil security group headed by UNHCR.

48. The refugees appear to accept their situation and do not wish to return to their homeland. They complain about their own Government, but not about

the Government of Zaire "which has the right to expel us", according to remarks made to the Special Rapporteur in the Kashusha camp in Bukavu.

The obligation of non-refoulement

49. Article 33 of the 1951 Convention, to which Zaire has been a party since 19 July 1965, prohibits the expulsion of a refugee to the country where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. However, on 19 August the Government of Zaire ordered the expulsion of refugees, alleging that the United Nations Security Council had suspended the arms embargo on Rwanda that had been imposed a year previously (resolution 1011 (1995)). In four days about 9,000 refugees were forced to leave the country for Gisenyi and Cyangugu, until international pressure brought a halt to the operation, with calls for voluntary repatriation. The Government notified the international community that if arrangements were not made for repatriation or settlement in a third country, on 31 December it would expel those still remaining in Zaire, claiming that article 33, paragraph 2 of the Convention authorized the expulsion of refugees who constitute "a danger to the security of the country" of asylum. The Special Rapporteur is of the opinion that the principle cannot cover situations involving such massive numbers as the present case. The expulsions and the violence with which the soldiers have acted have terrorized the refugees. Many have fled from the camps into the hills and no more than about 100 have opted for voluntary repatriation.

50. The complaint made by Zaire refers to the lack of repatriation programmes in Rwanda, which regards all refugees as perpetrators of genocide. As an example of the lack of cooperation the Zairian authorities point to the refusal by Rwanda to hold an international conference on the situation in the Great Lakes region, as required by Security Council resolution 1011 (1995) communicated to the Special Envoy of the Secretary-General of the United Nations, Ambassador José Luis Jesús. In any event, the participation of the President of Rwanda in the Presidential Conference in Cairo is a promising sign, as too is his commitment to create conditions which would ensure security, the recovery of property and political participation for those who return.

51. While some of the Zairian authorities have been unyielding in their rigorous application of the time-limit for expulsion, others have proved more flexible. The Cairo agreements, first of all, and subsequently the meeting of the Tripartite Commission (Rwanda, Burundi and UNHCR) on 20 December, should be seen as an undertaking to suspend the return of refugees, although there has been no specific declaration. Official policy continues to advocate massive and voluntary repatriation - despite the obstacles that exist and the refusal of the refugees - with a view to closing the camps. To achieve this, Zaire has undertaken to remove those responsible for intimidation, while Rwanda has promised to create conditions which would ensure security, shelter and information in the camps and in the communes of origin and to facilitate transfrontier visits. Repatriation will be carried out in groups and will require incentive measures. UNHCR will make available to the Governments the logistical support and other assistance required.

Reports of the introduction of weapons into refugee camps

52. Human Rights Watch/Africa brought to the attention of the Special Rapporteur a study on the introduction of weapons into refugee camps in Zaire through Goma airport, in violation of the arms embargo on Rwanda established in Security Council resolution 918 (1994) of 17 May 1994. It is believed that weapons could not have been introduced into the camps without the compliance of the Government of Zaire. Operations are allegedly continuing to reintroduce the FAR into Rwanda in order to overthrow the Government. It is claimed that about 50,000 persons responsible for acts of genocide who are in the refugee camps possess arms, funds and property brought out in the course of their flight.

53. The Special Rapporteur considered that these facts constituted a serious threat to the observance of human rights in the country for which he has a mandate. Accordingly, with a view to gathering information on the situation he held a working meeting at the headquarters of Human Rights Watch during a private visit to the United States. However, when the Security Council, in resolution 1013 (1995) of 7 September 1995, decided to request the establishment of a commission of inquiry, he reached the conclusion that it was no longer his duty to continue that task. Together with the Special Rapporteurs appointed by the Commission on Human Rights to investigate the situation of human rights in Burundi, Mr. Paulo Sergio Pinheiro, and in Rwanda, Mr. René Degni-Ségui, he contacted the Chairman of the Commission of Inquiry appointed by the Secretary-General, Ambassador Kassem, informing him of his interest in his mandate and requesting any information he might have that might be of interest to the Commission.

54. At the Cairo Conference the Presidents undertook to prohibit the introduction of weapons and military training in the refugee camps.

V. INCITEMENT TO RACIAL HATRED

55. The Sub-Commission on Prevention of Discrimination and Protection of Minorities suggested to the Special Rapporteurs on the situation of human rights in Zaire and Burundi that they should examine the role played by Radio Démocratie and other media in spreading genocidal conduct (resolution 1995/4). The President and the Prime Minister of Burundi wrote to the Secretary-General (11 October) requesting that the Security Council should analyse this problem which "seriously endangers the process of reconciliation in our country and peace throughout the entire region".

56. The investigations carried out by the Special Rapporteur (with Reporters sans frontières, Radio Hirondelle, journalists and others) indicate that Radio Démocratie is controlled by the National Council for the Defence of Democracy (CNDD) and apparently transmits from Uvira and other unidentified locations. Its messages, in French are of a propagandistic nature intended to inform the Hutus of Burundi on what does not appear in the regular media, inciting them to take up arms and disobey the Government, but not directly to racial hatred. Its objectives would seem to be more revolutionary than genocidal. While the transmissions in Kirundi are apparently more extremist,

they are not comparable to these of the former radio Milles Collines in Rwanda. At the Cairo Conference, the Presidents of the countries in the region undertook to make every effort to put an end to transmissions that incited to hatred and fear in the area.

VI. HUMAN RIGHTS AND DEMOCRACY

57. In his first report, the Special Rapporteur expressed the view that democracy was in itself a human right, and a prerequisite for, although not a guarantee of respect for all other fundamental freedoms and rights (paras. 114-118). Hence, the importance attached to the democratic process. Not all of the Zairian authorities seem to agree. The First Vice-President of the HCR-PT, Anzuluni Bembe, displayed a certain amount of annoyance at the inquiries of the Special Rapporteur as to the progress made in the transition to a democratic regime, implying that the subject was outside his mandate.

58. On 24 November 1995, Marshall Mobutu Sese Seko celebrated his 30 years in power, and there can be no doubt that his authoritarianism continues undiminished. Since assuming power, he has announced on five occasions the initiation of a democratic transition process, the latest of which was to end on 9 July 1995 with the entry into office of democratically elected authorities. As predicted by the Special Rapporteur, nothing of the sort occurred (E/CN.4/1995/67, paras. 122, 124 and 243).

59. Of the prior requirements (*préalables*) on which progress in the electoral process depends (1. Approval of the National Electoral Commission (CNE) Act; 2. Establishment of the Commission; 3. Adoption of an electoral budget; 4. Conducting of a population census, requiring the resolution of nationality problems; 5. Discussion and adoption of the Electoral Act), only one has been met: on 8 May, Law 95-003 on the CNE was adopted. However, it was not until 16 November that the HCR-PT definitively appointed its members.

60. What strikes the outside observer is the political development: a pact between the two "political families" has transformed the discussion of public matters into a "family affair". Together, they agreed on the Constitutional Act whereby the transition would end on 9 July; together they decided on 27 June that the time-limit would be extended by two years; together they decided that the CNE would be made up of members appointed by them; together they spoke at the beginning of the year of replacing Prime Minister Kengo by Tshisekedi, though this was not in fact done; and together they relieved Monsignor Monsengwo of his post of President of the HCR-PT. The people, who had played such an important and active role in the creation, development and promotion of the CNS, have now been reduced to disillusioned spectators. Even the creation of the CNE failed to inspire any greater enthusiasm, to the extent that various NGOs and churches decided to form an alternative commission on 3 August. Nor was any interest shown in USORAL's appeal to the Supreme Court - an appeal that was not filed by Monsignor Monsengwo as requested - for the annulment of the appointment of Prime Minister Kengo on the grounds that consensuality had not been respected. These facts would seem to support the view that the political circles are not interested in free elections, since many of the current members would not be elected.

61. The explanation of these developments given by the authorities is not convincing. They claim that political circles had listened to the people during the CNS process and were now implementing the agreements reached, so that it would be wrong to speak of any lack of popular activity or participation. The truth is that if the CNS agreements, adopted more than three years ago, had been respected, democracy would already be in effect. But most serious, perhaps, is the effort by the political class to "ethnicize" political rivalries, with disastrous results for peace among nationals of the same multi-ethnic country and for the thousands of foreigners living in Zaire.

62. In a word, it seems that the year that has gone by since the first report has been a waste in terms of progress towards a democracy respectful of freedoms. Just last October, the Minister of the Interior drew up an "electoral calendar" providing for the establishment during that month of the CNE; for the initiation, in November, of the process of harmonization of the various draft constitutions; for the selection, in December, of persons to train the census-takers; for a number of activities in 1996 leading to a referendum, in March 1997; presidential and legislative elections in May; regional, municipal, local and senatorial elections in June; and the entry into office of the authorities of the III Republic in July. The programme is already behind schedule for 1995, and it would be unrealistic to try to organize three elections in less than four months in 1997.

63. The various undeniable economic successes of the Kengo Government (inflation was reduced from 6,000 to about 500 per cent, although it is said to have surged again during the second half of the year), the commendable action against the corruption involving the Governor of Mbuji-Maji, executives of the Banque de Zaire, Customs and MIBA (State enterprise for trade in diamonds) and attempts to bring peace to Shaba (dismissal of Governor Kyungu) do not substantially alter the general state of political paralysis. And, as a keen observer pointed out to the Special Rapporteur, failure to move forwards in that area is tantamount to moving backwards, with, as a possible consequence, a radicalization of attitudes: the Special Rapporteur was told once again that the youth of the UDPS was "unlikely to continue to adhere to the pacifism of its leader", and would "prepare themselves for an armed struggle".

VII. CIVIL AND POLITICAL RIGHTS

64. Of the many reports of human rights violations that were received, only the most serious and substantiated ones were transmitted to the Government. The Special Rapporteur regrets that out of the 102 cases transmitted, he received replies to only 3.

A. Right to life

65. Report E/CN.4/1995/67 states that in accordance with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Code of Conduct for Law Enforcement Officers, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Declaration on the Protection of All Persons from Enforced Disappearance, the State has two obligations as regards the right to

life: not to deprive anyone arbitrarily of life, and to protect lives through the law. The Government of Zaire has failed to comply with these obligations in the following respects:

66. The death penalty. The death penalty applies to various offences, including political offences, such as "threat to State security". According to various sources, the courts continue to sentence people to death, essentially for crimes under ordinary law. The Minister of Justice said that the persons involved in the deaths of six Italian tourists assassinated in the Virunga reserve were given death sentences. However, the sentences were not being carried out until a decision had been taken on their applications for clemency, a process which generally took many years.

67. Political assassinations. The term is used to describe cases characterized by a clear desire to kill a person for political, religious, racial, linguistic, ethnic or other similar grounds, or for the purpose of political intimidation, as was the case in the death on 28 December 1994 of Mr. Diantete, owner of ETS Diamo Zaire, in Masina, Kinshasa, and Bruno Kabuya Lubilandji, President of the League of Human Rights, in Tshangugu, Kinshasa, on 26 March.

68. Enforced disappearances. No cases were reported between December 1994 and November 1995, nor does the report of the corresponding working group (E/CN.4/1996/38) mention any such cases.

69. Arbitrary deprivation of life by excessive use of force in putting down mass demonstrations or repressing crime, or in the performance of any public duty. This category covers the deaths of Kazadi Mwamba in a demonstration of workers demanding their salaries (Kindu, Maniema, 12 January); of a person named Emmanuel, together with Regine Kikabaliwa - the former was killed by armed individuals who, seeing one of their members detained by the crowd, shot and killed the latter (19 January); of Kishimba Mwela and Tshimwanga Yav, militants of the JUFERI, killed during a demonstration by members of the GC (31 March 1995); of Lenge Ilunga Mwepu, "the Buffalo", also a member of UFERI, killed by GC agents during a demonstration on 4 March.

70. The repression of the demonstration by the members of the Partie Lumumbiste Unifiée PALU on 29 July was particularly serious. There is a striking discrepancy between the figures for the number of deaths given by the sources (between 31 and 34) and by different authorities. There were two events: one at dawn, on the property of the leader Antoine Gisenga, in Limete, and the other later in the district of the Palais du Peuple, seat of the HCR-PT. According to the Minister of the Interior, there were only 11 deaths at the Palais du Peuple; the Minister of Defence admitted that there had been 12 others in Limete. The Governor of Kinshasa maintained that a total of 12 demonstrators had been killed in the two places. Whatever the case, it is clear that the demonstrators also killed a member of the GC. Among the demonstrators known to have been killed are Ingalala Mukwaziya, Makila Mudindambu, Dimuemamo Diakanda, Muhita and Charles Kapita.

71. Arbitrary deaths by law enforcement officers, shielded by their authority and impunity and without the act being justified by the performance of any public duty. These cases are the most common owing to the impunity enjoyed by

members of the police and the military, providing them with a real incentive for the abuse of power, plundering and robbing. The Special Rapporteur has transmitted to the Government the cases of Mbuka Mundele, killed by members of the military who broke into her house to rob her (Kimbanseke, 28 January); of Kuma Moble, killed by a member of the military (Kalamu, 30 January); of an eight-year-old boy, killed by members of the military belonging to the Special Research and Surveillance Brigade BSRS who shot at a couple in order to rob them (Barumbu, 18 February); of Edemia Yaholi Francisca, killed by members of the FAZ (Kinshasa, 25 February); of Mama Rose, killed by men in uniform for robbery (Karisimbi, 22 January); of M. Habyarima, murdered by members of the military for robbery (Virunga, 24 February); of Mupira Alingabato, killed by members of the military, motivated by robbery, for failure to present documents (Kisangani-Ubundu road, April); and of the paediatrician, Dr. Satiro, killed in an attack on his home by men in uniform on 18 March. Particularly serious was the murder of Father Eduardo Graas by members of the military driving a vehicle without licence plates who broke in to the Catholic mission of Kimbongo on 19 January for the purpose of robbery.

72. Deaths under torture. Torture continued to be practised just as intensively as in previous years, "if not more intensively", according to reports received by the Special Rapporteur. In the following cases, for which no reply has been received from the Government, the victims died under torture: André Aliamuru Ndiemba, accused of theft by his employer, tortured by agents of the SARM (20 February); Liwenge Ndjale, tortured by police officers for refusal to hand over money (Basoko, 21 February); and Kyamba Abedi, tortured by members of the GC at home in Maluku (Kinshasa, 24 August).

73. Deaths through failure to perform the duty to protect life during tribal or regional conflicts. The first report highlighted the responsibility of the Zairian State for attempts to kill during tribal and regional conflicts, a responsibility arising from its obligation to protect life by law and ensure that there is no kind of discrimination on any ground based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and from the obligation to protect the rights of minorities (para. 152).

74. The Zairian authorities, and not only members of the Executive, have frequently violated these obligations to protect, and worse still, have incited the native populations to hatred of the non-native populations, including internally displaced ethnic groups native to Zaire (the Kasai population in Shaba) and ethnic groups from other countries (Rwandans throughout the country, principally in Northern and Southern Kivu (see paras. 23 to 37 above)), causing conflicts that have resulted in thousands of deaths.

B. The right to security

75. Report E/CN.4/1995/67 reaffirms the right to security (art. 3 of the Universal Declaration of Human Rights and art. 9 of the International Covenant on Civil and Political Rights) as an autonomous right, linked to all civil, cultural, economic, political and social rights. Enjoying a right not only means not having been deprived of it, but also having the certainty that it

will not be violated. The report adds that the right to security is one of those rights that is least observed in Zaire, essentially owing to arrogance and abuse on the part of the armed forces, the security forces and the police who, deprived of pay for many months and guaranteed impunity, carry out "plundering expeditions" (paras. 156 to 159). In 1995, the Kengo Government adopted measures to guarantee security at Ndilli airport (Kinshasa), measures which the Special Rapporteur was able to verify. However, the insecurity and plundering remain an undeniable reality.

76. It was reported, for example, that "members of the Gendarmerie of the military, of the GC, and of the BSRS and the security forces extorted money from buyers and simple passers-by at the Kinshasa market before the very eyes of the city authorities"; that "the train from Kadima to northern Katanga, which passes through a military base, is detained by soldiers who extort money from the passengers at Fukui and Lokoka stations"; that "general insecurity underlies the human rights situation, and no effective measures have been adopted to prevent violence. Armed aggressions, rape of women, plundering and extortion are a way of life for the men in uniform"; that "in Kalemi, the members of the military commit aggressions, beating people to steal their possessions and extorting money from women on their way to the market"; that "at Bukavu quay, the people with goods must pay the members of the military"; that "there is no political will on the part of Mobutu to progress towards democracy, with the result that people live in terror"; etc.

77. The Special Rapporteur was informed of major plundering expeditions that took place on 18 June and 21 July in Buabo and Kishonja and on 21 July in Bupfuku, Kihuma, Busheka, Mushubangabo, Kalambairo, Musenge, Bulwa, Mafuo and Butambo, which resulted in a total of four deaths.

78. Of the 112 cases transmitted to the Government 29, affecting 68 persons, were violations of the right to security (thefts, burglaries, extortions, temporary abductions - for example the abduction of Gaby Masumbuko, the AZADHO cameraman, on 4 January - rape of women, etc.).

79. The ZCSO contingent provided security within the refugee camps, but according to reports, both in Goma and Bukavu the outside population continued to suffer from their acts of plunder. The refugees expelled in August suffered from violence and theft at the hands of the contingent, whose members, this time, were punished.

C. The right to physical and mental integrity and not to be subjected to torture

80. According to paragraph 165 of the first report, "All the sources consulted confirmed that torture was commonplace." This was repeated by all the sources consulted in connection with the second report. Once again, the Special Rapporteur was told that female detainees were regularly raped. This had happened to a girl named Martine on 11 March in Ngiri-Ngiri, and to a 14-year-old and a 15-year-old girl in Kasandulu, Bas-Zaire, last January. Other methods include heavy blows with sticks, bayonets and iron bars, and prolonged fettering of hands or feet, the resulting wounds of which the Special Rapporteur spoke in his first report. The Special Rapporteur on torture adds floggings, electric shocks, hangings and various forms of sexual

abuse to that list (E/CN.4/1996/35, Add.1, para. 854). To this must be added violations of physical integrity and excessive use of force in putting down public demonstrations (paras. 96 to 98 below).

81. The Special Rapporteur also transmitted to the Government reports concerning Abedi Kyamba, GC (Kinshasa, 16 November 1994); Disashi Mwampata, Odia Kabongo, Assani Dijeba, Kalambayi Ngoie, GC (Lubumbashi, 9 and 10 December 1994); M. Bulefedi (30 November 1994); Edouard Ngandu, National Secretary of DYNASTE, Gendarmerie of L'Inguinal (Kinshasa, 8 March); Bokope Ndienge, M. Lokinga and Alain Ngende, AZADHO investigators from Basankusu, Equateur (6 March); M. Aliker (Tonikani, Haut-Zaire, March); Martin Kavundja, President of the UFOS, GC (10 March) - a case which was also reported to the Special Rapporteur on torture (E/CN.4/1996/35/Add.1, para. 862); Yuma Mugeni, GC (Asumani, 10 January); Augustin Kikukama Binsamba, General Secretary of the Parti des Libérateurs et Pacifistes Lumumbistes (LPL) of Southern Kivu, Division Spécial Présidentiel (DSP) (Lingwala, 5 March); Jean Paluku Kasuki Molia, LPL militant, DSP (Butembo, June).

82. Situation of the prison population. The Special Rapporteur, who was unable to visit prisons this time, was told that the situation described in paragraphs 170 to 180 of report E/CN.4/1995/67 remained essentially unchanged, a fact that was confirmed by the Special Rapporteur on torture (E/CN.4/1996/35/Add.1, para. 854). While some sources spoke of a deterioration, others spoke of an improvement in the food situation in prisons assisted by the international community and the ICRC. In any case, the State does not appear to be fulfilling its basic duty of feeding the prisoners. This was confirmed by Anzuluni Bembe, First Vice-President of the HCR-PT, who said that "the Rapporteur would like the State to feed the criminals rather than those who enforce the law". A positive, though isolated development was the visit to the prisons by the President of the Lubumbashi Court of Major Instance, conducted at the suggestion and expense of the Centre for Human Rights and Humanitarian Law of Lubumbashi.

83. Sanitary conditions showed no improvement. The Special Rapporteur transmitted to the Government the case of Abuka J., Atshimayima, Esa Omeyeka, Ikamba Mawa, Mwenye Bakali, Ongwayande and Tabu Bambale, prisoners at the Central Prison of Kisangani, who were on the verge of starvation and were fed only once a week.

D. Right to nationality

84. The situation described in chapter III with respect to the Banyarwanda and Banyamulengue constitutes disregard for the human right to nationality (Universal Declaration of Human Rights, art. 15). These are peoples born in Zaire whose ascendants were also born and raised in the country, but who have been granted and denied Zairian nationality by successive laws and, having no other nationality, have ultimately been left stateless.

85. Although Zaire is not a party to the Convention on the Reduction of Statelessness, the principles contained therein are nevertheless principles of international customary law that it is impossible for the States to disregard. Thus, a State has an obligation to grant its nationality to a person born in its territory who would otherwise be stateless (arts. 1 and 8).

E. Right to liberty of person

86. Report E/CN.4/1995/67 welcomed the decision of the Kengo Government to release all political prisoners (paras. 187 and 188). It also points out that the reasons for arbitrary detentions include the anarchy in the powers of the security services, "which are all authorized de jure or de facto to carry out arrests"; the failure to respect time-limits for bringing a prisoner before the courts; and the lack of provision for habeas corpus (paras. 184 to 186). There have been no changes in this respect.

87. The arbitrary detention of the three Burundian officials, accused in Burundi of involvement in the foiled coup d'état that claimed the life of President Ndadaye and for whom no extradition request had been lodged within the time-limit, was terminated after almost two years during which they were held prisoners on the grounds of illegal entry only. Major Deo Bugene was released without charge on 18 August, and following a new extradition request, Sylvestre Ningaba and Dominique Domero were returned on 2 September to the requesting State in the presence of the ICRC. In what is known as the "La Voix du Zaire" case, the persons convicted in connection with the military revolt of January 1992 were also released.

88. The Special Rapporteur also transmitted to the Government the reports of the arbitrary arrest of Nzinga Simon, Victor Kaziama, Theresa Munanga and Mela Katika, cachots of the Gendarmerie in Masamuna (21 December 1994); of Malopo Bula-Mabuku, Mwana Kikadidi, Mubambila, Bindanda, Kiadi Mangoma, Kasaka Papa Seke, Lunzanza Jacob, Lunzanza Mawa and M. Kinduki, police (Kimbelengue, 7 and 8 February); of Jeef Mutoto, Gendarmerie in Masi-Manimba (30 January); of Blaise Ngoma, GC (17 January 1995); of M. Buhozi, for refusing to go to the airport to await the Prime Minister (Goma, 23 June); of Okitalombo Pena Ngongo and Florimond Mbelu Thimanga, trade-union leaders of the DYNAFET union, cachots of the GC (Kinshasa, 8 to 13 March and again on 17 April); and of Calnan Jacques Agustine and Eduardo Pobre, pilot and co-pilot in the case of the 14 tons of counterfeit bank notes, arrested in October 1994, still held prisoners in spite of an order of release from the Supreme Court.

89. The following cases deserve particular attention: (a) Mohamed Ame Razzak, a United States law student and a member of the NGO International Human Rights Law Group, who was on a training course at the Centre for Human Rights and Humanitarian Law in Lubumbashi, was arrested by the GC and transferred to the SNIP from 14 to 15 July on charges of supplying arms for the liberation of Katanga, and was refused permission to contact his Consul. The Special Rapporteur is certain that he was arrested because of his work at the Centre; (b) Muller Ruhimbika and five other members of the Banyamulengue community, who were arrested on 21 November for sending a memorandum to the authorities about the situation of their ethnic group. They were released a few days later. The Special Rapporteur wishes to place on record that Muller Ruhimbika was interviewed by him, and that consequently, his arrest constitutes a violation of resolution 1995/75, which urges Governments to refrain from all acts of intimidation or reprisal against those who cooperate with organs established by the Commission; (c) Batabiha Bushoki, Paluku Live Rive and Prosper Kakoy, who were detained in Goma in November for meeting with the former President of the United States, Jimmy Carter. All three were

subsequently released. This is the only case in which the Government replied to the Special Rapporteur, informing him that the incident was a misunderstanding that would not recur.

90. The Working Group on Arbitrary Detention declared the deprivation of liberty that affected Kalunga Akili Mali, Magara Deus, Nasser Hassan, Adalbert Nkutuyisila and three other persons to be arbitrary - on the grounds that it constituted a serious violation of due process of the law (decisions 31/1995 and 32/1995), while the cases of J.M. Oliveira and Yumba di Tchibuka are still pending.

F. Right to a fair trial

91. In this section, the Special Rapporteur refers to paragraphs 204 to 214 of his first report. The evidence received indicates that in 1995 no progress was made in respect of the exercise of this right: defence lawyers were generally absent, pre-trial detention lengthy and the presumption of innocence disregarded. Equality of the parties is not always respected (the Special Rapporteur was told that "the judges always decide in favour of members of the military and the people with power"), an assertion that is seemingly borne out by the case of Emmanuel Kamana Kadiri, who was sentenced to death, in a trial reportedly marked by partiality in the appreciation of the evidence, for the murder of the Secretary of the Governor of Southern Kivu. And, needless to say, human rights continue to be violated with impunity. As a rule, the lawyers who defend human rights do not make use of the remedies available under the law.

92. The judiciary comprises only 1,448 judges, many of them inexperienced, for a population that requires 5,000. A substitute judge receives 20,000 new zaires (NZ) (approximately US$ 1.1) and a Supreme Court judge NZ 325,000 (US$ 18).

93. The progress made towards the independence of the judiciary, which began with the CNS (E/CN.4/1995/67, para. 209) was reversed. The decision of the Supreme Court regarding freedom of assembly, which invoked legislation dating from the colonial period that had been abrogated by the Constitutions of the independence period, was particularly regrettable (see para. 97 below).

94. The judiciary has not proved effective in its investigation of two cases which the Special Rapporteur considers highly representative, and which are referred to in his recommendations in the first report (para. 263): the murders of the journalists Pierre Kabeya and Adolphe Kavula. In the first of these cases, the aim of the investigation is apparently to prove that the victim was a printing house employee rather than a journalist. In the other case, the investigation has merely sought, albeit unsuccessfully, to locate his widow, and to question a doctor. Only the Government Procurator took any heed of the Special Rapporteur's recommendation, drawing the attention of the examining magistrate to the situation, but to no avail.

95. Indicative of the precariousness of the independence of the judiciary and an example of the intimidation to which independent judges are subject is the incident that occurred on 20 July in Kisangani, when youths from MPR vandalized the courts and the houses of lawyers and judges in protest against

two decisions unfavourable to the Governor of Haut-Zaire, Lombeya. The problem is ethnic as well as political, since those concerned were Baluba. This was stressed by the Special Rapporteur on the independence and impartiality of the judiciary in a letter dated 27 October.

G. Right to freedom of assembly

96. Exercise of the right to freedom of assembly has declined on account of the frustration caused by the lack of progress towards democracy and the failure to solve the fundamental problems. Even so, political parties held a number of public meetings, such as those held by USORAL on 31 March and 8 August in protest against the Government and the support it receives from the international community. In addition, the loss by the Union nationale des travailleurs du Zaire (UNTZA) of its monopoly made it possible for other organizations to hold events, such as the protest called by the Council of Civil Service Unions (COSSEP) for 8 to 10 March.

97. Many public meetings were severely repressed during the year, a practice that the Minister of Defence justified, even in the case of the bloody repression of the PALU demonstration, by the need to preserve public order. The mass commemorating the closure of CNS on 6 December 1994 in Bukavu, which was a protest against violence and plundering, was put down by the military who detained and beat participants for six hours inside the church and attacked the Archbishopric; on the third anniversary of the Christians' march (16 February) the laying of the foundation-stone of the monument to the martyrs was prohibited, and only the planting of trees of life was permitted; in Kananga, Governor Tsibwabwa gave the order for a demonstration by the UDPS and the PDSC to be put down; on 17 March in Bakumu a meeting of the Friends of Nelson Mandela was prevented; on 29 July, a demonstration organized by PALU was repressed, an unspecified number of people were killed and many wounded - including journalists - while the historic leader of the party, Antoine Gisenga, was detained and subsequently released (see para. 70 above).

98. The Special Rapporteur was concerned that the Supreme Court should convict the accused, including three members of parliament, in the case arising from the demonstration organized by COSSEP in March, on the grounds of articles 1 and 6 of Ordinance 25/505 of 1959, adopted by the colonial authorities to put down meetings in support of independence. The ordinance was to expire after six months unless it was renewed by a law (art. 22 of the Colonial Charter). Though no such law was enacted, the Court took the view that the legislative instrument in question was in fact an act, which does not expire, and not an ordinance. Whatever the case, even if it were an act the fact that it contravenes article 28 of the 1964 Constitution, which did not subject the right of freedom of assembly to any restrictions, supports the argument that it has been abrogated, and the suggestion that such an interpretation would generate a legal void is unsustainable. The demonstrators were finally given a fine of NZ 20,000 (US$ 1.1).

H. Right to freedom of association

99. The most serious violation of freedom of association concerned a non-governmental organization, AZADHO. In February, the Government Procurator demanded that the organization prove that it had been authorized to operate,

as required by a law enacted in 1965, and on 4 April he declared AZADHO to be operating illegally. The case required urgent action by the Special Rapporteur, who brought the matter up with the Minister of Justice and the Government Procurator, both of whom simply insisted that they were under obligation to enforce the law, although the former did advocate tolerance in allowing NGOs to bring themselves into line with existing legal provisions. This incident, which constitutes a violation of resolution 1995/75 of the Commission prohibiting reprisals against those who cooperate with its machinery, may affect all NGOs. There do not appear to have been any recurrences. In addition AZADHO's office in Kindu was arbitrarily closed.

100. The Special Rapporteur was concerned about the hostile feelings expressed towards NGOs in various sectors of the Government. While their significant role is recognized, that recognition is always qualified by derogatory remarks: "but many of them are more concerned with politics than human rights"; or "many of them aren't to be believed"; or "there are some NGOs that invent incidents to get money from abroad"; or "the Special Rapporteur should check his facts, because many NGOs aren't reliable", etc.

I. Right to freedom of opinion and expression

101. The statements made in the first report remain fully valid: (a) there are no restrictions on the written press; (b) on the other hand, the written press has a very small circulation and conveys more opinions than information; (c) newspapers are only read by people who speak French and are only available in the big cities; (d) newspapers cost approximately half a dollar, way beyond the means of the majority; (e) official radio and television show no signs of pluralism, with the exception of one or two programmes (paras. 217 to 220). In addition, the few radio stations operated by the churches cover a very small area. The situation may be summarized in one sentence: the Zairian people are not informed and have no means of obtaining information. In these circumstances the transition process and the elections will not be credible.

102. A number of incidents reveal the fragility of freedom of opinion and expression: (a) on 9 March the journalist Modeste Mutinga was arrested by the GC for criticizing the Government; (b) on 18 April the journalist Patrice Mpoyi wa Mpoyi was arrested in Mbuji-Maji for denouncing influence peddling; (c) on 20 April the journalist Edmond Kalala was arrested by the SARM for his reports on the counterfeit bank notes case; (d) the journalists Belmonde Magloire and Mazangu Mbuilo were imprisoned from 1 to 18 April and ultimately convicted for articles denouncing judicial corruption; (e) the journalist Ekele wa Ekele and the editor of the newspaper Le Groignon were convicted for denunciations concerning the Minister of the Interior; (f) in October the journalist Mbuju wa Kabila was arrested and taken to Makala prison for reporting various wrongdoings in the Tax Administration; (g) the nine journalists dismissed from Zairian radio and television on political grounds have not been reinstated (E/CN.4/1995/67, para. 222 (b)); (h) no progress has been made in the investigations into the murders of the journalists Pierre Kabeya and Adolphe Kavula.

103. The press bill, which has been before the HCR-PT for a year now, has not been adopted.

VIII. ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND RIGHT TO DEVELOPMENT

104. According to article 2 of the International Covenant on Economic, Social and Cultural Rights, the prime obligation of a State in respect of these rights is "to take steps, ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means". In addition, article 8 of the Declaration on the right to development (General Assembly resolution 41/128) stipulates that States should undertake "all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, ...". The resolution adds that "effective measures should be undertaken to ensure that women have an active role in the development process", and advocates popular participation to foster development.

105. None of this is taking place in Zaire, a country of enormous mineral wealth and fertile land, which has nevertheless sunk into a state of prostration and poverty (see E/CN.4/1995/67, paras. 223 to 225).

106. The Kengo Government achieved economic progress that enabled it to improve its relations with international financial agencies (see para. 63 above). In 1994, the rate of economic growth was -16 per cent, while a rate of -0.6 per cent is expected in 1995 and positive growth of 1.6 per cent in 1996. However, the population does not benefit from the improvement in macroeconomic indicators. As the Catholic bishops noted, the population does not have enough to eat, its state of health is precarious, mortality rates have worsened notably, and medical treatment is available for the rich only (letter of 21 February). The Special Rapporteur was not informed of any development plans, nor did he find evidence of any "effective measures" aimed at gradually achieving respect for economic, social and cultural rights, and the Minister for Foreign Affairs effectively recognized this problem when he said that "what is needed is a 'social plan' so that the population may benefit from growth".

107. The right to work and to housing. There has been no change in the situation described in paragraphs 226 to 228 of document E/CN.4/1995/67.

108. The right to health. Health conditions deteriorated considerably in 1995. The crisis affecting doctors and hospitals and the violations of article 12 of the Covenant, described in paragraphs 229 and 230 of the first report, were compounded by the State's neglect of epidemics, the most serious of which was the ebola virus epidemic which affected 190 persons between March and April in Bandundu, killing 121. The Government handed over responsibility for eradicating the epidemic to the World Health Organization, the Governments of Italy, Ireland, Sweden, Belgium and others, to the Centres for Disease Control in Atlanta as well as to NGOs such as Médecins sans frontières, Belgium. The health budget only amounted to 1.3 per cent. Other preventable epidemics included measles, which affected 525 displaced persons from Kasai in Shaba, 45 per cent of whom died; dysentery, cholera, meningitis (Kasomeno, in Haut Zaire, and Kasenga) and some 280 cases of poliomyelitis in Mbuji-Maji. There is still the high incidence of AIDS mentioned in the first report.

109. The right to education. The violations of the provisions of article 13 of the Covenant reported in paragraphs 231 and 232 of report E/CN.4/1995/67 were equally serious during 1995. Only 2 per cent of the national budget is earmarked for education and the State not only fails to provide free primary education, but its failure to maintain schools and the continuing arrears in teachers' pay, contribute to the low school enrolment to the point where, according to some sources, as many as 75 per cent fail to attend. There are authorized private schools that lack the minimum infrastructure, while their cost is from 5 to 12 times higher than what parents pay for State schools. The Special Rapporteur was told that "in a family of five children, only two go to school, usually the boys".

IX. SITUATION OF CHILDREN

110. The Special Rapporteur was told that there had been no significant change in the situation described in paragraphs 233 to 237 of his first report: it is children that suffer most from the deterioration of the economy; high rates of infant mortality persist on account of the lack of health policies; levels of school enrolment remain low, particularly in the refugee camps; the exploitation of children in diamond mining and other activities continues and child prostitution and the recruitment of children for service in the armed forces has not ceased.

111. In addition, the Special Rapporteur received reports concerning the ill-treatment of children as young as six years of age, who were detained in the juvenile prison in Benseke in Mont Gafula. Those who have visited the prisons say that children receive paltry food, that their ration is reduced still further if they misbehave, and that they are forced to perform exhausting tasks as punishment.

X. SITUATION OF WOMEN

112. The relegation of women to a domestic role, attributable to cultural factors, their lack of political involvement, the reduced pay they receive when on maternity leave, the violence within the family that affects two out of every three women, the discrimination practised by families in respect of education and the sexual attacks by soldiers and policemen reported in paragraphs 238 to 241 of the first report continued unabated in 1995. Of the 45 per cent of the population that are illiterate, 70 per cent are women. The CNS agreements on equality before the law and the application of the Convention on the Elimination of All Forms of Discrimination against Women have not been put into practice and there is no ministry or department for women's problems.

113. All sources emphasized that the rape of women in prisons was commonplace, and that the main victims were pro-democracy activists and the spouses of activists. The Special Rapporteur was told that "armed aggressions, rape of women, plundering and extortion are a way of life for the men in uniform".

114. The lack of sexual education is reflected in the high fertility rate (6.7 per cent). The rate of infant mortality is said to be constantly rising.

It has been reported that between 4.6 and 11 per cent of pregnant women in Kinshasa are HIV positive, while the percentage varies between 2.5 and 5.5 per cent in other regions.

115. There has been an increase in the number, level of organization and activity of women's organizations. In May the Women's Movement for Justice and Peace (MFJP) called on people not to use the NZ 1,000 and 5,000 notes, while women in Kisangulu mobilized to demand the trial of an intelligence officer on charges of rape. The churches and various NGOs have adopted a gender perspective that is generally disregarded by the prevailing male-dominated culture, a situation which the regime has exploited to its advantage.

XI. CONCLUSIONS AND RECOMMENDATIONS

A. General conclusions

1. Regarding the recommendations made by the Special Rapporteur in his first report

116. According to paragraph 16 of Commission on Human Rights resolution 1995/69, the Special Rapporteur must indicate how the Government of Zaire has taken into account his recommendations. Regrettably, his assessment is discouraging.

117. There has in fact been no progress in any of the following areas: effective and genuine control over the State security apparatus by the Government and the HCR-PT and an end to their impunity; the organization of "States General" on those forces, the separation of the defence and police functions and concern for their training (E/CN.4/1995/67, paras. 257 and 258); bona fide measures to limit the authority of Marshal Mobutu (para. 260); elucidation of the crimes concerning the journalists Kabeya and Kavula (para. 263); adoption of the electoral laws and other prior requirements for elections to be held (para. 264); ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including the declaration provided for by article 21 (para. 265); strengthening of the judiciary and ending the intimidation of judges, as well as the fulfilment by the latter of their role as custodians of liberties (para. 266); attention to complaints from society at large (para. 267); and cooperation with the specific procedures of the Commission (para. 268). Worse still, there has been a regression in respect for the independence of the judiciary and in the role of judges as custodians of human rights.

118. The Government has taken important steps towards ensuring that public officials are regularly paid, although the complaints received would seem to indicate that arrears have once again begun to accumulate (para. 261). Although Zaire has submitted reports to the Committee on the Elimination of Racial Discrimination and a report to the Committee against Torture - without being a party to the Convention - it has made no progress in cooperating with the other organs and mechanisms of the Commission.

119. The Special Rapporteur appreciates the invitation made by the Government to visit the country, but feels obliged to mention that he did not receive the necessary cooperation in connection with his requests for information.

2. Democracy

120. This report leads to the conclusion that 1995 was a wasted year for the transition process. Neither the adoption of the CNE Act, nor the appointment of the CNE's members, nor the proposed electoral calendar give any reason to think otherwise. Fundamentally, nothing has changed and the fear expressed by the Special Rapporteur in his first report of a feeling of frustration among the Zairian people was confirmed:

(a) The absolute authority of the President remains intact. He decides policy, controls regional administration and the National Bank and his deputies have a majority within the HCR-PT. The armed forces, the security forces and the police obey his orders and as a result they enjoy impunity, in violation of the CNS agreements. A Government project to establish a Supreme Defence Council and revise their status awaits a decision by the FAZ, which will, in principle, reject it. The only one of the prior requirements for elections to have been met was the appointment, in November, of the CNE, with strong reservations on the part of sectors outside political circles; prominent figures from the political family of the President argue that the prior requirements for the elections are futile, since they "discourage the process" (the First Vice-President of the HCR-PT, Anzuluni Bembe, and the Governor of Kinshasa, Mungul Diaka);

(b) No effort is made to disseminate the CNE Act;

(c) Legislative activity is virtually paralysed;

(d) The major problems affecting the entire population are not debated: development plans; the participation of women in politics; the desirability of privatizing State enterprises (including the railways and the major mining consortiums, such as GECAMINES or the diamond mines); parliamentary representation (proportional or majority), etc.;

(e) There has been no political liberalization of State radio and television;

(f) The State remains absent, with serious repercussions on the enjoyment of civil and political rights, and particularly on economic, social and cultural rights. The absence of the State, which was already reported in 1994 (see E/CN.4/1995/67, paras. 126 and 255) was repeatedly stressed by all those interviewed;

(g) The overdue electoral calendar is unrealistic, and all the activities planned for 1995 are already overdue.

3. The observance of human rights

121. Regrettably, the situation described in resolutions 1994/87 and 1995/69 and in the Special Rapporteur's first report remains unchanged. The right to

life is still at the mercy of the military and police forces, whose impunity remains intact; judges regularly hand down death sentences and the President ignores applications for clemency; plundering, torture, cruel, inhuman and degrading treatment, and the rape of women prisoners or victims of plundering have not ceased; public demonstrations are put down with incommensurate violence, abuses are still shielded by the higher interests of the State. Neither radio nor television enjoy greater freedom; prison conditions have remained unchanged; there are no plans to establish equality before the law for women or to eliminate discrimination.

122. Ethnic and regional violence and the attitude of the authorities towards it are particularly serious. Witnesses invariably refer to incitement by the President's political supporters, and events in Shaba since 1992 confirm this beyond all doubt. Conflicts break out and develop without the authorities doing anything to prevent them, and developments have reached such an extreme that "regional cleansing" has now been completed in Shaba.

123. The situation of people of Rwandan origin who were born and brought up in Zaire and whose forefathers also lived there, but who are denied Zairian nationality out of excessive nationalism, is also a source of concern. The international community has endeavoured to reduce the number of stateless persons and has established the principle that persons who would otherwise be stateless are entitled to the nationality of the country in which they were born. In Zaire, however, the past 30 years have seen a surge in anti-Rwandan sentiment, with its corollary of statelessness.

124. The Special Rapporteur is unable to endorse the Government of Zaire's view that it is entitled, under the exception provided for in article 33, paragraph 2 of the Convention relating to the Status of Refugees, to return ("refouler") Rwandan refugees. The exception is only intended for individual cases in which the refugee might be regarded as a danger to the security of the country in which he is. The expulsions in August and those announced for 31 December, which have apparently been suspended, do not satisfy these criteria, nor do they comply with the guarantees relating to expulsion set forth in article 32 which must, for obvious reasons, extend to persons returned to a country in which they have grounds to fear they will be persecuted (reasonable period, submission of evidence to clear himself, due process of law). The Special Rapporteur hopes that the Cairo and Geneva agreements reflect a definitive commitment on the part of the Government of Zaire not to carry out forced returns; that, at least, is the understanding of the international community.

B. Recommendations

1. To the Zairian authorities

125. Democracy and human rights. The Special Rapporteur is obliged to reiterate all the recommendations he made in his initial report, based on two key notions: (a) there will be no respect for human rights until the power that Marshal Mobutu has exercised at will for over 30 years is genuinely restricted; (b) the impunity enjoyed by FAZ, the intelligence services and the

police must be ended. The rest will follow of its own accord: free elections and compliance with the deadlines, which have already been extended, for the completion of a transition process that will be entering its sixth year.

126. Civil and political rights. At the risk of repeating the recommendations made in the first report, a number of points must be emphasized: (a) there must be a bona fide liberalization of official radio and television, which are currently fiefs of the political family of the President; (b) the security forces must be trained to deal with public demonstrations in a humane and professional manner, in strict compliance with the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; (c) the Basic Principles for the Treatment of Prisoners and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be strictly observed.

127. Economic, social and cultural rights. The Government cannot ignore the shortages affecting its people as a result of failure to observe these rights. It is essential to adopt the necessary measures, to the maximum of available resources, to improve education, health and housing, with the participation of society at large.

128. Society at large. Society at large forms groups that are frequently informal, and the question of whether or not they possess legal personality or are officially recognized by the authorities is secondary. They must operate freely, without being subject to requirements that are impossible to meet, and they deserve attention.

129. Tolerance. The Government must stop seeing enemies where there are none. It must abandon its aggressive language towards people of Rwandan and Burundian origin, and must stop denigrating one ethnic group in the eyes of others. As long as political circles fail to set an example by adopting a language of coexistence and tolerance, the conflicts referred to in this report can hardly come as a surprise.

130. Nationality. The situation of the Banyamulengue and Banyarwanda represents a serious violation of human rights, first and foremost of the right to nationality. Granting them Zairian nationality would not only be in keeping with the most elementary humanitarian principles, but it in fact constitutes an obligation under international law. And indeed, such a step does not even violate the Transitional Constitution of 9 April 1994, article 7.2 of which prohibits dual nationality, since the people from Rwanda have no nationality. The Special Rapporteur recommends that the Zairian authorities ratify the 1961 Convention on the Reduction of Statelessness.

131. Refugees. The agreements reached in Geneva on 20 December should be seen as a commitment to defer the expulsion of the Rwandan refugees, due to take place on 31 December. If the agreements are interpreted in good faith, the commitment is a clear one and should be fulfilled, even if it is not explicitly spelt out.

132. Trial of persons accused of genocide. Zaire's international obligations prohibit it from giving refuge to persons who have committed a crime against peace, a war crime, or a crime against humanity as defined in the

international instruments (art. 1, F, (a) of the Convention relating to the Status of Refugees). Such is the case of genocide. If the International Criminal Court requests for trial persons who have invoked refugee status in Zaire without being refugees (as is the case of persons guilty of genocide), such persons should be handed over to the court.

133. The rights of women. A fundamental aspect of education as a whole, but particularly the education of the police, the armed forces and prison wardens is the importance of respecting the dignity of women, in which regard the shortcomings are enormous. The Government should prevent such abuses - an area in which women's NGOs can make a major contribution - and punish them in an exemplary fashion. In addition, the provisions of the Convention on the Elimination of All Forms of Discrimination against Women, to which Zaire is a party, should be applied and the equality of men and women before the law reaffirmed.

134. Office of the High Commissioner for Human Rights. The Government should sign the Cooperation Agreement and facilitate the installation in Zaire of the office proposed in the first report (E/CN.4/1995/67, para. 277).

135. Zairian National Commission on Human Rights. There is no point in establishing a national institution that does not enjoy the participation of society at large. The Government must demonstrate from the outset its commitment to establishing a pluralistic and transparent committee; it must ensure that the Committee's reports and recommendations can be made public, provide for free access to it and observe, in general, the principles adopted by the United Nations General Assembly.

2. To non-governmental organizations

136. The Special Rapporteur has stressed the need to professionalize the NGOs as the only way of ensuring the success of their selfless efforts. His message seems to have been received, and the reports submitted this year were far more substantial than in 1994. The appeal by international NGOs for assistance to Zairian NGOs working in the field of human rights, development, gender and victims, should be reiterated.

3. To the international community

137. The international community should continue to keep a close watch on the already very lengthy process of transition and the deteriorating human rights situation, as recommended in the first report (paras. 272, 273 and 276). At the same time, it should continue to provide assistance in caring for refugees. In 1994, the Special Rapporteur drew attention to the need "to find a viable, safe, humane, dignified and early solution" for the refugees from Kivu. The desperation over this problem that can be felt in Zaire has to be understood and addressed on the basis of the well-established principle of burden-sharing. If Zaire is rightly required to fulfil its obligation to comply with the principle of non-refoulement, it should also be given assistance in finding a solution along the lines proposed.

138. The need for active and preventive diplomacy to avert the horrors that occurred in Rwanda and Burundi, already referred to in paragraph 274 of the first report, should be reiterated. The fears of the Special Rapporteur are shared by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye (in his report E/CN.4/1996/4/Add.1, para. 121) and by the Special Rapporteur on the situation of human rights in Burundi, Mr. Paulo Sergio Pinheiro (E/CN.4/1996/16, para. 170), who have requested close cooperation between the special rapporteurs responsible for the human rights situation in Rwanda, Burundi and Zaire. Such coordination will require human and financial support.

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